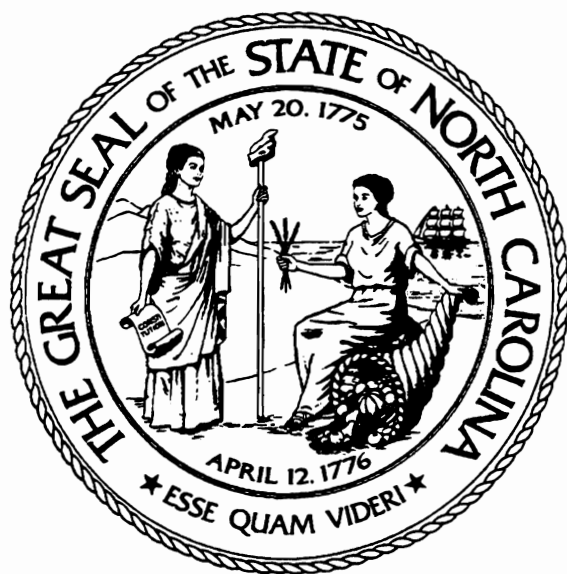


# EMERGING ISSUES, HOT TOPICS AND TRENDS IN LEGISLATIVE ISSUES



# 2005

RESEARCH DIVISION  
N.C. GENERAL ASSEMBLY  
FEBRUARY 2005

February 3, 2005

Dear Members of the 2005 General Assembly:

We have in recent years briefed incoming legislators on issues, hot topics, and trends in legislative issues that might emerge during the upcoming biennium. In this publication, we will present the major issues that are likely to be introduced during the 2005 General Assembly. I compiled this list by requesting the legislative staff to provide their ideas as to which issues, in their opinion, are likely to arise. I added my ideas to theirs. Brenda Carter edited this document. What follows is the product of this process.

**I WOULD EMPHASIZE THAT THIS IS NOT MY PUBLIC POLICY WISH LIST NOR THAT OF ANY STAFF MEMBER. OUR MENTIONING OR FAILING TO MENTION ANY ISSUE SHOULD NOT BE VIEWED AS AN ENDORSEMENT OF OR OPPOSITION TO ANY PROPOSAL.**

The names and telephone numbers of the Legislative Services Office staff people most familiar with the area discussed are listed after each main topic. The person or persons preparing the individual entry is found at the end of the entry. If you wish to investigate any of these matters in greater detail, please contact the listed individuals.

We hope that this publication is of use to you as you undertake the work of the 2005 General Assembly.

  
Terrence D. Sullivan  
Director of Research

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## **Aging**

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### **Overview**

According to data provided by the Division of Aging and Adult Services, Department of Health and Human Services, North Carolina ranks thirty-third in the nation with regard to the percentage of the population that is 65 years of age and older. In 2004, North Carolina's population age 65+ totaled 1,016,214 (12.1% of the total population) and the 85+ population totaled 118,511 (1.4% of the total population). Overall, North Carolina ranks tenth among states in the number of persons age 65 and older.

The Baby Boomer generation represents those born between 1946 and 1964. As this generation ages, services provided to older adults and budgets providing those services will be greatly impacted. The oldest Baby Boomers are currently 58 years of age and the youngest are 40. In the next 25 years, the entire Baby Boomer generation will be between the ages of 65 and 83. Not only are North Carolina's citizens aging, but the moderate climate, quality of life, and access to health care found in North Carolina make it a destination spot for retirees migrating from across the country. A positive migration rate indicates that more individuals are moving to a state, than are leaving the state. According to information supplied by the Division of Aging and Adult Services, in the five-year period between 1995 and 2000, North Carolina had a net migration rate of 22.1 per 1,000 among individuals age 65+. North Carolina's current migration rate for older adults is higher than Georgia and Tennessee, but lower than Florida and South Carolina. The 2003-2007 North Carolina Aging Services Plan predicts that by 2020, the age 65+ population in North Carolina will have grown 71% over the 2000 baseline, compared to 36 percent for the general population. By 2030, the prediction is that the State could have 17.8% of the population age 65+, which would represent over 2.2 million individuals.

The North Carolina Study Commission on Aging is statutorily charged with studying and evaluating the existing delivery system of State services to older adults and recommending an improved system to meet present and future needs of older adults. Each biennium, the Commission conducts public hearings across the State to solicit input from citizens on issues of interest and/or concern for older adults. The Commission also invites organizations and associations who advocate on behalf of older adults to address the Commission. The Commission studies a variety of issues each interim and makes an annual report containing findings and recommendations to the General Assembly and the Governor.

making decisions about the care of individual patients; in the case of seniors the programs generally focus on exercise, nutrition and medical interventions and are evaluated in terms of their impact on life span, quality of life, and cost of medical services. The CDC and Merck Institute of Aging & Health recently released *The State of Aging and Health in America 2004*. Among the ratings contained in the report, North Carolina ranks 49<sup>th</sup> in 'no leisure-time physical activity,' 47<sup>th</sup> in 'current smokers,' 47<sup>th</sup> in 'physically unhealthy days, and 46<sup>th</sup> in 'oral health.' The Department is especially concerned about health disparities among subgroups of older adults and has formed a team to look at how our State can improve its ratings.

### ***Home and Community Care***

The Study Commission on Aging is expected to make recommendations to the 2005 General Assembly concerning health and community care. The Commission is requesting that the Office of the State Auditor conduct a more in-depth assessment of the Community Alternatives Program for Disabled Adults (CAP/DA), an alternative to nursing home care for adults who meet eligibility requirements and are at risk of nursing home placement if they don't get community-based care. In addition, there are several recommendations related to improving the quality of care in home care agencies and increased funding for the Home and Community Care Block Grant. Specific recommendations from the Governor's Advisory Council on Aging include the expansion and strengthening of programs, services, and benefits in areas including Home and Community Care Block Grants, Senior Centers, transportation services, State/County Special Assistance In-Home programs, asset limits for Medicaid for aged, blind, and disabled persons, adult day care/adult day health care services, the creation of an Office of Housing in the Department of Health and Human Services to study housing needs for older adults, funding for indoor plumbing for older adults, increasing the Homestead Property Tax exemption, and ensuring the viability of the CAP/DA program. Priority issues for The Senior Tar Heel Legislature in the 2005 Session include increasing funding for home and community based services, and increasing funding for senior centers.

### ***Long-Term Care***

It has been determined that the recently enacted law concerning criminal record background checks for long-term care employees will need to be rewritten. The law, which was set to take effect January 1, calls for nursing homes to seek national criminal background checks on all employees and contract workers whose jobs put them in contact with residents at nursing homes, adult-care homes, home-care agencies and mental health providers. Only direct-care workers

### ***Federal Issues Related to Aging***

Additional medicare changes are on the horizon for 2006. The Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA) was signed by the President in December 2003. For 2004 and 2005, this law provides Medicare beneficiaries with the option to purchase a prescription drug discount card, and provides a \$600 credit per year to qualifying low-income individuals. The discount cards will be discontinued and will be replaced in 2006 with the option to enroll in a stand-alone drug plan or to join a private health plan. It is possible that the MMA will be amended during 2005 as concerns linger over the high costs associated with the new law.

The White House Conference on Aging will be held October 23-26, 2005. The Conference occurs once a decade to develop recommendations for the President and Congress on issues, policy and research in the field of aging.

### **Alcoholic Beverage Control**

*Brenda Carter, Susan Sitze, Dickie Brown (Research Division 919.733.2578)*

A recurring issue is whether legislation should be enacted to make state ABC laws uniform by eliminating the local option system and authorizing the issuance of all ABC permits in locations throughout the State. The opposing viewpoint is that eliminating the necessity of local elections would take away the right of local voters to decide what is best for their communities. The integrity of the local option system is doubted by some because over time the legislature has enacted provisions that allow establishments including sports clubs, private country clubs and resorts in specially defined areas to serve liquor by the drink, without the necessity of voter referendums. As establishments in otherwise "dry" areas of the State continue to seek legislation that will allow the issuance of ABC permits, we can expect to see either growing numbers of requests for special provisions, or more proposals for the statewide issuance of ABC permits. Proponents of statewide liquor by the drink say that the matter is an important economic development and tourism issue that deserves consideration. *Brenda Carter (Research Division 919.733.2578)*

### **Budget – See Finance**



protection laws and enforcement actions. The federal rules would exempt national banks and their subsidiaries from the requirements of North Carolina's anti-predatory lending laws. According to a report of the National Conference of State Legislatures, several states have extended the exemption to state-chartered banks in order to level the playing field and maintain parity between state and national banks. Although North Carolina was a leader in outlawing predatory lending, the State is also the home of some of the largest banks in the country and has often sought to keep its state-chartered banks on par with national banks. Although it is unlikely that the Governor would sign any bill that undermines the predatory lending law because he championed it as Attorney General, this is a topic that may emerge during the 2005 Session. *Karen Cochrane-Brown (Research Division, 919.733.2578)*

### ***Payday Lending***

Since NC's payday lending law was allowed to sunset in 2001, the State has been struggling with the effects of unregulated payday lending operations. These businesses operate by affiliating with national banks that are exempt from the prohibitions of State law. As a result, many NC based businesses that do not qualify for the federal preemption have been put out of the payday lending business while out of state companies continue to operate. In addition, sources for small short-term loans have been severely restricted in the State because under current law such loans are deemed not profitable. Legislation to reauthorize and regulate this business has been introduced in almost every session since the sunset of the previous law, but so far, none have been successful. It is anticipated that NC will again be asked to permit some form of payday lending in 2005. *Karen Cochrane-Brown (Research Division, 919.733.2578)*

### ***Uniform Transfer on Death Securities Registration Act (TOD)***

It is likely that the General Assembly will again be asked to adopt the Uniform Transfer on Death (TOD) Security Registration Act, which has now been adopted in at least 46 other states. A bill providing for adoption of the Act was introduced in the 1997 Session, and a bill to adopt the act has been passed by the House every session since 1999. In 2003, HB 798 was passed by the House but was held up in the Senate after a fiscal note showed a potential reduction of between \$5.1 and \$5.5 million dollars in revenue to the General Fund due to the bill's effect in reducing the amount of estate assets that would be subject to probate fees.

TOD permits the owner of securities (stocks, bonds, mutual funds, etc.) to designate a beneficiary to own the security upon the owner's death. The owner retains all ownership rights in the security during his or her lifetime and can change the beneficiary designation anytime up until death. While TOD securities are subject to estate and death tax laws, they pass to the beneficiary outside the

several variations. Generally, the legislation has provided for one of the following methods of selection: 1) gubernatorial appointment; 2) gubernatorial appointment from a list of nominees recommended by a nominating commission; and 3) gubernatorial appointment with legislative confirmation. In each proposal, judges seeking to serve additional terms after appointment/nomination must receive approval of the State's voters in a non-partisan retention election. The North Carolina Bar Association has historically supported a change in the way that judges obtain and maintain their offices. *Walker Reagan (Research Division 919.733.2578)*

### ***8-Year Term for District Court Judges***

During both the 2001-2002 and 2003-2004 Sessions, bills were introduced to amend the NC Constitution to provide that the term of office for district court judges would be eight years instead of the current four years. Superior and appellate court judges currently serve eight-year terms. Proponents of extending the term of district court judges argue that lengthening the term would encourage more people to be willing to serve as judges. They point out that many more established attorneys are reluctant to give up an established legal practice on the chance that they may be voted out as a judge four years later. Another argument in favor of eight-year terms is that it would reduce the amount of time and expense that current judges have to spend campaigning for office. Opponents of extending the term argue that eight years is too long a term for a "bad" judge that may need to be voted out of office. They argue that since the district court is the "people's court", the public is better protected by a shorter term of office. In the past the Conference of District Court Judges and the NC Bar Association have supported legislation to give district court judges an eight-year term. *Walker Reagan (Research Division 919.733.2578)*

### **Criminal Law and Procedure**

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*Beth Braswell (Bill Drafting Division 919.733.6660)*

### ***Sentencing and Corrections Policy***

A primary goal of the Structured Sentencing Act, effective October 1994, was to ensure that correctional resources were linked to policy decisions. The most expensive resource -- prisons -- was to be used primarily for the most serious offenders, while many non-violent offenders would be sentenced to community corrections. The General Assembly also established a statutory requirement for a fiscal impact analysis (fiscal note) of any bill that could increase the incarceration

and design of 512 new beds. DJJDP developed a plan based on smaller; treatment oriented facilities and proposed construction of 13 small facilities. In 2004, the General Assembly authorized issuance of debt of \$35 million to build up to five new facilities with a total of up to 224 new beds.

The key issues for consideration by the 2005 General Assembly will be to determine the future bed capacity needs for the more serious juvenile offenders and to assess the cost-benefit of proposals to establish treatment-based staffing in current and new Youth Development Centers. *Jim Mills and Denise Thomas (Fiscal Research Division 919.733.4910); Susan Sitze (Research Division 919.733.2578); Beth Braswell (Bill Drafting Division 919.733.6660)*

### ***DNA Analysis***

DNA analysis has been a recurring topic in the media in the last few years, and it has been high on the Attorney General's agenda. The State Bureau of Investigation (SBI) Crime Lab in the Department of Justice provides DNA analysis for all local law enforcement agencies in North Carolina, with the exception of Charlotte-Mecklenburg. Due to resource constraints, until recently the SBI only accepted rape cases for DNA analysis if law enforcement had an identified suspect. For the other "no suspect" cases, the rape kits remained in storage in local law enforcement agencies. The SBI has now accepted a few of these kits on a pilot basis, and plans to accept new "no suspect" kits. The backlog of "no suspect" kits is approximately 6,000, with an estimated 1,000 new kits per year.

In the last three years, the General Assembly has increased the number of DNA analysts, directed the SBI to outsource some of the backlogged kits, and authorized an expansion of the SBI lab building (the expansion had not begun as of January 2005). The SBI has also received federal grant funding for DNA analysis. The SBI will likely request additional DNA analysts in 2005. In a related issue, the SBI also manages the DNA database of convicted offenders (CODIS). In 2003, the General Assembly expanded the database to include DNA from all convicted felons. *Chloe Gossage (Fiscal Research Division 919.733.4910); Susan Sitze (Research Division 919.733.2578)*

### ***Death Penalty Moratorium***

In recent years, numerous questions have been raised about how and against whom capital punishment is carried out. Anti-death penalty activists have maintained that the race and economic circumstances of defendants as well as victims are disturbingly and disparately related to death sentences. The American Bar Association, in calling for a death penalty moratorium in 1997, cited as a major concern increasing evidence of racial disparity in prosecution or sentencing decisions. In response to those concerns, the North Carolina General Assembly

occupied before the arrest or indictment. North Carolina law currently permits expunction in very limited circumstances, including when charges are dismissed or the person is found not guilty. Principle provisions governing the expunction of criminal records are set out in Article 5 of Chapter 15A of the General Statutes; additional provisions are set out in the Juvenile Code and in the Controlled Substances Act. For example, provisions are made for expunction of the following records:

- Juvenile records relating to a person's having been adjudicated delinquent or undisciplined while a minor
- Conviction for a misdemeanor committed while under the age of 18
- Misdemeanor possession of alcohol or drugs while under the age of 21

The Studies Act of 2004 authorized the Legislative Research Commission to study the conviction and sentencing of youthful offenders for the purpose of establishing a program or system by which youthful offenders with no prior convictions may either maintain or reestablish a sealed, expunged, or reduced criminal record. The proposed study was to include a review of the law regarding conditional discharge and expunction of records for first offenders under the State's Controlled Substances Act. Although the study was not undertaken, the issue may again come before the 2005 Session. As in past sessions, there is also likely to be interest in legislation that would allow any person convicted of a misdemeanor to apply for expunction of the record of that conviction after a specified period (for example, ten years) provided the person has not been convicted of any other criminal offense within that specified period. *Brenda Carter (Research Division 919.733.2578)*

### ***Actual Innocence Commission***

Recent developments in DNA testing have confirmed the long standing fear that, despite the superior nature of our justice system, there still exists the possibility that individuals can be convicted of crimes they did not commit. The Actual Innocence Commission was created by the Chief Justice of the North Carolina Supreme Court to provide a forum for education and dialog among prosecutors, defense attorneys, judges, law enforcement personnel, legal scholars, legislative representatives, and victim advocates regarding the common causes of wrongful conviction of the innocent and to develop potential procedures to decrease the possibility of conviction of the innocent in North Carolina. In furtherance of its mission, the Commission has been looking at several issues related to the criminal process in North Carolina with a goal of not only decreasing the chance of convicting the wrong person but increasing the likelihood of

supervision is not transferred from the Post-Release Supervision and Parole Commission. The subcommittee's report was approved by the full Commission in December, and the Commission's report is due to the General Assembly on March 1. The General Assembly can expect to see legislation based on these recommendations in the upcoming Session. *Hal Pell and Susan Sitze (Research Division 919.733.2578); Chloe Gossage (Fiscal Research Division 919.733.4910)*

### ***Street Gangs***

The House Select Committee on Street Gang Prevention was established to examine issues related to violent street gangs whose members threaten, terrorize, and commit crimes against the citizens of this State. The Committee is expected to make recommendations to the 2005 General Assembly regarding a Street Gang and Terrorism Prevention Act that will provide penalties for street gang crime, promote efforts to prevent street gangs and provide for intervention for those involved in street gangs. *Susan Sitze (Research Division 919.733.2578)*

### **Disaster Relief in Western North Carolina**

*Barbara Riley (Research Division 919.733.2578)*

North Carolina was hit by 6 hurricanes in the 2004 season. Western North Carolina was most severely affected, being impacted by both Hurricane Frances and Hurricane Ivan in September. The hurricanes caused landslides and flooding resulting in two presidential disaster declarations. The Federal Emergency Management Agency (FEMA) designated nineteen counties as eligible for Individual Assistance and Public Assistance programs. These counties include Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Transylvania, Watauga, Wilkes and Yancey. An additional 26 counties were designated by FEMA as eligible only for Individual Assistance programs. These counties included Alamance, Alexander, Bladen, Cabarrus, Caswell, Catawba, Cleveland, Columbus, Cumberland, Davidson, Forsyth, Gaston, Graham, Guilford, Hoke, Iredell, Lincoln, Mecklenburg, Randolph, Roberson, Rockingham, Rutherford, Scotland, Stokes, Swain, and Union.

The President Pro Tempore of the Senate and the Speakers of the House of Representatives established the Joint Select Committee on Hurricane Relief to identify the unmet needs resulting from Hurricanes Frances and Ivan in Western North Carolina and to make recommendations for additional relief efforts necessary to assist the affected area in recovering from the storms. The Committee held several meetings in the Asheville area, including a special meeting to inform

### ***Financing of Incentives***

*(Also see the Finance Section)*

The General Assembly will be expected to address how, and whether, it will finance economic development incentives. Most of the Bill Lee Act will expire January 1, 2006. Enacted in 1996, the Bill Lee Act is a package of state tax incentives given primarily in the form of tax credits for job creation, worker training, and investment in machinery and equipment, real property, and research and development. Counties are divided into five economic distress tiers based on unemployment rates, per capita income, and population growth. For many of the credits, the lower the tier of the county, the more favorable the incentive. The General Assembly will need to extend the Bill Lee Act, revise it, or devise other means of encouraging and financing economic incentives. In the past few years, the State has relied more heavily on grants through the Jobs Development Investment Grant program and anticipates larger annual appropriations to the One North Carolina Fund. The One North Carolina Fund (formerly the Governor's Industrial Recruitment Competitiveness Fund) was created in 1993 to help North Carolina achieve its stated goal of economic growth through uniform regional prosperity. The fund helps the state achieve this goal by recruiting and expanding quality jobs in high value-added, knowledge-driven industries, and by providing financial assistance to those businesses or industries deemed by the Governor to be vital to a healthy and growing State economy and that are making significant efforts to expand in North Carolina. In addition to these economic development incentive proposals the legislature can expect continuing interest and support for reduction of the corporate income tax rate.

### **Education: Primary And Secondary**

*Robin Johnson, Drupti Chauhan, Shirley Iorio, Sara Kamprath, Dee Atkinson (Research Division 919.733.2578); Adam Levinson (Fiscal Research Division 919.733-4910)*

#### ***Highly Qualified and Competent School Personnel***

##### ***Teacher Recruitment and Retention***

Retirements, a growing student population, and class-size reduction initiatives have all contributed to the teacher shortage. However, simply getting more teachers into the profession will not be sufficient if we are to turn around schools in need of improvement, help all students meet rigorous academic standards, and close the achievement gap. In short, the challenge to the profession is to prepare and retain greater numbers of high quality teachers. This shortfall of teachers is of growing concern. It is not only an issue of pure numbers, but also an

and to better support them once they are there. Shirley Iorio (Research Division 919.733.2578)

### *Professional Development*

The State spends a great deal of money on professional development programs for teachers, and provides teachers a number of staff development days. These areas could be examined to make sure that both the professional development and the released time are used effectively and efficiently to focus on improving student achievement. Shirley Iorio (Research Division 919.733.2578)

### *Teacher Mentoring*

A comprehensive induction program is one of the most effective methods for retaining quality teachers, with mentoring being just one component of such a program. North Carolina has had mentoring programs in place for several years. In the 2003 session, the General Assembly directed the State Board of Education to evaluate the effectiveness of a representative sample of local mentor programs. Legislators may want to consider the findings of this evaluation to determine whether the State-funded mentor programs are doing what they are intended to do – retain teachers. Shirley Iorio (Research Division 919.733.2578)

### *Teacher Salaries*

The issue of teacher salaries often raises many questions that legislators may need to consider: Should there be differentiated pay? Should teachers be rewarded based on student growth or gains? Should the base pay be raised? Should the teacher salary schedule be revised to make it more in line and competitive with other employment that has similar education or training requirements? Where can the money for this be found?

When the General Assembly passed the Excellent Schools Act in 1997, one of the goals was to increase teacher salaries over a four-year period so that, by the year 2000, the starting salary for teachers would be at least \$25,000. That goal was reached. Since that time, the General Assembly has implemented a number of measures to raise teacher salaries to the national average and to strengthen the quality of the teaching workforce. Between fiscal years 1996-97 and 2003-04, North Carolina's average teacher salary improved from 43rd among states (80.8% of the national average) to 18th (95.6% of the national average). Estimates for 2003-04 rank North Carolina 23rd among states (92.5% of the national average). The national average for teacher salary typically increases by approximately 2-3% annually.

Despite intense budget pressures throughout the past four fiscal years (2001-02 to 2004-05), teachers received "experience step" pay increases each year.

## ***School Funding Issues***

### ***Enrollment Growth***

Average Daily Membership (ADM) in the public schools is projected to grow by 26,797, or 1.96%, bringing the Statewide total in FY 2005-06 to 1,395,860. The cost to fund the new growth will be approximately \$141 million, which will be built into the continuation budget. ADM has increased 20% over last 10 years. The 10 largest school systems have accounted for 72% of the growth and 40 school systems have experienced declining ADM. Given the budget constraints that will exist this year and the funding implications related to the Leandro litigation (see next topic), legislators may need to evaluate the appropriateness of the various formulas upon which funding for ADM is based. *Adam Levinson (Fiscal Research Division 919.733.4910)*

### ***Leandro Issues***

Ten years have passed since North Carolina's current school funding case ("Leandro") was filed in 1994. There have been two North Carolina Supreme Court rulings in Leandro. The first opinion was issued in 1997 and established for the first time that North Carolina has the constitutional obligation to establish and maintain a system of public schools in which every child has the opportunity to obtain a sound basic education. [Leandro v. N.C., 346 N.C. 775 (1997)] The Supreme Court defined a "sound basic education" as one that will provide the student with at least the following:

1. *Sufficient ability to read, write, and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society;*
2. *Sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state, and nation;*
3. *Sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training; and*
4. *Sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.*

In the second Leandro opinion, the Supreme Court generally endorsed (i) the lower court's finding that an inordinate number of at-risk public school students in Hoke County and other rural, low-wealth counties were not demonstrating that



household, (ii) the percentage of public school students who have at least one parent with less than a high school diploma, and (iii) the percentage of children age five to 17 who qualify for federal Title I funding because of their poverty. During the most recent hearing on January 11, 2005, the parties agreed this version of the DSSF formula is a reasonable means for funding additional educational opportunities for at-risk students, and the superior court approved it as part of the State's plan.

While the parties and the court endorse the DSSF program, it is not the only remedy appropriate for addressing the issues presented in the case. Moreover, a number of questions, including the following, remain unresolved: How should the DSSF formula be funded? How long should it take to fully fund it? Should other funding allotments, such as low-wealth, be fully funded instead of or in addition to the DSSF program?

Aside from issues related to the DSSF program, other larger issues remain, including whether the State and schools systems should blend or target existing funds so they can be used more effectively to ensure that at-risk students have the opportunity to obtain a sound basic education? Should there be changes in school management or the instructional process so as to increase educational opportunities?

The 2005-06 session will be the General Assembly's first opportunity to formally consider and respond to the plan that is being developed. The Governor's budget is likely to include continuing funds for the DSSF program for the pilot school districts and may include some expansion funding for evaluation of the pilot interventions. It also is expected that advocates and some legislators will push for full funding for the Low-Wealth Supplemental Fund. The General Assembly will need to examine whether the current education funding system and funding levels are appropriate to meet the Leandro requirements and whether administrative changes can improve educational opportunities. The General Assembly also should scrutinize all proposed education legislation and funding within the context of Leandro. Robin Johnson (Research Division 919.733.2578); Adam Levinson (Fiscal Research Division 919.733.4910)

### ***Student Achievement***

The upcoming legislative session is expected to bring a continued concerted effort on the part of State lawmakers and policymakers to raise standards for students and educators and hold schools, students and educators accountable for their performance. Within this framework, there will be an emphasis on educating all children including those at high risk for not completing high school and those that have not been able to succeed in traditional school settings. Drupti Chauhan (Research Division 919.733.2578)

plan holds schools accountable for the educational growth of the same groups of students over time. At least a year's worth of growth for a year's worth of schooling is expected. The essence of the plan is that there are rewards for educators when schools show academic success and negative consequences for educators and schools when they do not. Last year, the State spent approximately \$101 million on the ABCs bonuses. The 2004-05 budget bill also directed the State Board of Education to evaluate the accountability system and, if necessary, modify the testing standards so that they continue to reflect the State's high expectations for student performance. Any changes must go into effect no later than the 2005-06 school year. One issue that may surface this year is whether the current ABC bonus amounts and criteria for receiving them continue to be appropriate. *Drupti Chauhan (Research Division 919.733.2578); Adam Levinson, Fiscal Research Division 919.733.4910)*

### *No Child Left Behind (NCLB)*

This federal act governing education, enacted in 2002, requires states to strengthen their standards and assessment systems so that schools and school systems are held accountable for the performance of all students, including students with disabilities and students with limited English proficiency. At this time, accountability under NCLB is based on whether schools, school systems, and states are making adequate yearly progress (AYP) towards the goal of bringing 100% of their students to academic proficiency in reading, mathematics, and science by the end of the 2013-2014 school year. It is anticipated that the President, in the coming months, will propose an expansion of NCLB into the high schools.

In order to reach 100% proficiency, each state has adopted a timetable that increases the proficiency standards, which are based on student achievement on standardized tests, until 100% proficiency is attained by the end of 2013-2014. In North Carolina, the 2004-2005 school year has a significant "bump" in the proficiency standard required to make AYP. This makes it highly likely that more schools will be identified as failing to make AYP. In addition, every subgroup at a school must make AYP, so the more subgroups there are in a school, the harder it is for the school to make AYP.

For every consecutive year that a school fails to make AYP for one of its subgroups, there are increasing penalties that range from public reporting, to allowing students at that school to choose to attend another school that made AYP for all its subgroups, to offering supplemental services, to eventually taking over the school. Since more schools are likely to fail to make AYP this year than last, it is expected that the consequences and their attendant costs will increase, too.

In addition, the State's accountability system (the ABC's) rewards schools based on additional criteria (primarily whether one group of students makes or exceeds its academic expectations from one year to the next). It is likely that more

### *Preschool/Early Childhood Education*

There is research that indicates that high quality early education has an impact on long-term achievement in language, literacy and math skills. Children who have spent time in a high quality program generally have fewer behavior problems and are retained less than other children in the early grades. Although all children benefit from high quality early education, at-risk children derive a greater benefit. There are two programs in particular which will continue to be at the forefront of addressing this issue: Smart Start and More at Four. Smart Start was created by the General Assembly and Governor Hunt and is designed to improve the quality of early childhood programs. For the fiscal year 2004-2005, approximately \$193 million was appropriated for Smart Start. This money is used to fund a wide range of projects that are determined by local collaborative partnerships involving both public and private groups. Governor Easley and the General Assembly created More at Four to target at-risk four-year olds. All More at Four programs are required to select and implement a research-based curriculum. The 2004-2005 appropriation for More at Four was approximately \$51 million. *Drupti Chauhan (Research Division 919.733.2578); Lisa Hollowell (Fiscal Research Division 919.733.4910)*

### *Infrastructure Needs*

School facilities and school construction may be an important issue in the upcoming biennium as many of the rapidly growing school systems are having a difficult time keeping up with their infrastructure demands. These needs come from the recent class size reduction initiatives and rapid population growth in some areas of the State. While the counties are legally responsible for funding school facilities, there has been a pattern of the State providing assistance to the local governments about every ten years and it has been about ten years since this last happened. The last facility needs survey conducted in 2001 (which makes projections for five years) indicated that \$6 billion is needed for school construction. This number does not include the class size reductions which occurred after the survey took place and over 2300 classrooms are needed for just the class size reductions. Various groups would like the State to consider a dedicated revenue stream to help counties meet the State's needs for school facilities. There has been discussion that money from the lottery that Governor Easley will likely propose would be used to fund school facilities needs. *Drupti Chauhan (Research Division 919.733.2578)*

### *School Calendar Adjustments*

One of the last bills enacted during the 2004 Regular Session (S.L. 2004-180) made significant and quite controversial changes to the school calendar.

concerning children's health issues, particularly childhood obesity and physical education requirements in the schools. The question may also arise as to whether or not to provide more funding for school nurses. *Shirley Iorio (Research Division 919.733.2578)*

## **EDUCATION: HIGHER EDUCATION**

*Robin Johnson, Drupti Chauhan, Shirley Iorio, Sara Kamprath, Dee Atkinson (Research Division 919.733.2578); Richard Bostic and Kristine Leggett (Fiscal Research Division 919.733.4910)*

### ***Enrollment Growth/Access***

#### ***Community Colleges***

Current community college growth estimates show relatively low growth for the first time in four years. Anticipated enrollment for fiscal year 2004-05 is 191,103 Full Time Equivalency (FTE). This is an increase of 2,493 FTE or a 1.32% increase. Community Colleges are not funded on a projected basis. They are funded based on the prior year or the average of the three previous years. The cost to meet the anticipated enrollment growth is \$7.9 million. *Kristine Leggett (Fiscal Research Division 919.733.4910)*

#### ***UNC***

The Board of Governors has requested a 4.3% increase in student credit hours for regular term and distance education students in fiscal year 2005-06. This request would fund 533 instructional positions to teach an additional 8,128 students (4,810 FTE on campus and 3,318 FTE distance education) at a cost of \$73.6 million. *Richard Bostic (Fiscal Research Division 919.733.4910)*

### ***Need-Based Financial Aid***

Last year Congress enacted legislation that will impact the number of students eligible for and the amount of money that a student can receive through federal Pell grants. Decreasing federal student financial aid combined with increased tuition rates at UNC constituent institutions means that more State-funded student financial aid will be needed to ensure access to higher education for all qualified students. The General Assembly began funding the UNC Need-Based Financial Aid Program in 1999-2000. A total of over \$47 million is now available for resident undergraduate students. Approximately 30,000 undergraduates receive need-based grants averaging \$1600 per student. The Board of Governors has requested \$8.7 million to pay any tuition and fee increases for the students currently receiving this aid and to cover an additional 630 students. *Sara Kamprath (Research Division 919.733.2578)*

a 10-year period in order to keep up with retirements and enrollment growth. *Sara Kamprath (Research Division 919.733.2578); Kristine Leggett (Fiscal Research Division 919.733.4910)*

### ***Economic Development***

As the global economy has shifted from a manufacturing base to a knowledge base, North Carolina has lost the most manufacturing jobs of any state in the nation. The UNC constituent institutions and the community colleges are working to help create high-quality jobs to replace those lost manufacturing jobs, to prepare the workforce to fill the new jobs, and to address other economic development priorities in the State.

In 2004, the General Assembly directed the UNC Board of Governors and the State Board of Community Colleges to study the current academic program offerings and facility needs of both systems to ensure that North Carolina citizens are prepared for the jobs in the growing knowledge economy. A preliminary report to the General Assembly is due by April 15, 2005.

The start-up for the biotechnology initiative between the community colleges and the UNC system was funded through the GoldenLEAF foundation and continuation of these efforts will require additional funding. *Sara Kamprath (Research Division 919.733.2578)*

### ***Seamless Transition from One Institution to Another***

Some legislative proposals that may arise this session include facilitating more seamless transitions from one education institution to another. For example, there has been discussion of providing guaranteed admissions to one of the 16 UNC institutions for students who successfully complete an Associate in Arts or Associate in Science at a community college. Other issues include continuing to make improvements to the Comprehensive Articulation Agreement (CAA) to include more pre-major agreements within the CAA; and encourage more collaboration between the community college and university systems. This past year, the Task Force on UNC/NCCCS Partnerships made several recommendations designed to enhance the working relationship between the universities and community colleges. There is an expansion request of \$6.5 million to implement the recommendations of the Task Force with the biggest piece being \$3.5 million to establish a university presence at each of the 58 colleges to advise transfer students and to coordinate program offerings. *Drupti Chauhan (Research Division 919.733.2578); Kristine Leggett (Fiscal Research Division 919.733.4910)*

### ***Higher Education/Immigration***

Granting in-State tuition to persons not in legal status may also be a hot topic of discussion for the upcoming session. Various states throughout the

commissioners may then purchase the recommended voting system. The State Board recently gained the power to disapprove voting systems already in use.

Proposals that may come before the legislature include: making election directors, and perhaps other county election personnel, employees of the State rather than the county; adding a regional layer of administration for a more realistic span of control between the State Board and the 100 counties; giving the State Board greater authority with regard to the procurement of voting systems, either with the State making all the purchases, or with the State setting specifications and negotiating with vendors, leaving the county with the opportunity to decide what general type of system to choose. *Bill Gilkeson (Research Division, 919.733.2578)*

### ***Early Voting Through Election Day***

In the five years that North Carolina has made mailed absentee voting and one-stop absentee voting (commonly known as "early voting") more available, we have seen a dramatic increase in its usage. By the 2004 general election, almost 30% of the voters voted early. In doing so, they voted in their county of residence, but without regard to what precinct they lived in. Several county election officials have begun a campaign to make the process used in early voting the universal process for all voters, through election day. A certain number of "super sites" similar to early voting sites would be set up in a county, and during a period beginning a specified number of days before election day and continuing through election day any voter in the county could vote at any one of those sites. The super sites would be staffed by the best permanent and temporary personnel the county board of elections could find, without regard to where they lived in the county. Each site would be equipped with all the ballot styles in the county and with online access to the board's registration and other records. One effect of this would be to discontinue the precinct as a unit of election administration; county boards would no longer find it necessary to recruit officials in each precinct or find polling places in each precinct. Proponents say that training and oversight of personnel could be more effective and that personnel costs would likely go down, as would equipment costs since fewer machines would be needed. One problem is that if precincts were abolished entirely, most election returns would be available at the county level only. If anyone is concerned about the study voting behavior at a neighborhood level, precincts or something like them would need to be preserved as data collection units; that would mean that votes in every contest would need to be made available by precinct.

The General Assembly has required that counties be able to report all absentee voting by precinct as early as the 2006 elections, if they can do it without compromising the secrecy of the ballot – no county made the report in 2004.

notification to the State Board of change of address rather than a new registration by the voter. The Director of the State Board of Elections has advocated making sure that any voter who votes out of precinct be given the full ballot that voter is eligible to vote. *Bill Gilkeson (Research Division, 919.733.2578)*

### ***Revisit the Rule Concerning New Elections***

In 2000, the Election Laws Revision Commission decided to make it clear that any new election must be in the same jurisdiction as the original election, however some may want to revisit the issue if the requirement for a statewide new election presents itself. Another approach, proposed by The Director of the State Board of Elections, would leave the entire-jurisdiction rule in place, but provide that if an identifiable group of voters were denied their right to vote (or their votes were lost, as occurred in Carteret County in the 2004 general election) those people alone would be given a new opportunity to vote. *Bill Gilkeson (Research Division, 919.733.2578)*

### ***Assistance in Absentee Voting***

The question has been raised whether North Carolina's statutes about assisting absentee voters are in compliance with federal law, specifically Section 208 of the Voting Rights Act. Section 208, which was codified as 42 USCA 1973aa-6, says: "*Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.*" North Carolina law provides that in one-stop sites, voters may be assisted only by the election officials at the site or by a near relative or guardian. State law also provides that a patient in a nursing home, rest home, or hospital may only be assisted in marking the ballot by a near relative or guardian; anyone else assisting the patient is guilty of a felony. The nursing home felony statute could perhaps result in somebody being disenfranchised if they're blind and have no near relative or guardian. There may be some proposals for alternatives that prevent the exploitation of patients who are in comas, are afflicted with severe dementia, or feel at the mercy of those assisting them. *Bill Gilkeson (Research Division, 919.733.2578)*

### ***Counting Mail Absentee Ballots***

Now that mail absentee ballots are no-excuse and are extensively used, it has been suggested that county boards of elections need to be able to start counting the absentee ballots before 2 p.m. on election day. Some boards of elections have stayed up all night election night opening envelopes and running ballots through a tabulator, only to face counting provisional ballots the next day. The Director of the State Board of Elections has recommended allowing boards of

appears that the policy is not applied uniformly, perhaps because some long-time precinct officials are not aware of the State Board's interpretation of the statute concerning the limitation on activity in and around the voting place. The legislature may consider changing the law to clarify the issue. *Bill Gilkeson (Research Division, 919.733.2578)*

### ***Prohibiting Piecework Pay for Voter Registrations***

In the 2004 election season several boards of elections had to struggle with last minute registration applications that resulted from voter registration drives conducted by groups that used shoddy practices. In the wake of that, the legislature may see a proposal to ban people being paid for voter registration based on the number of forms they turn in. That would reduce the incentive to falsify registration forms. *Bill Gilkeson (Research Division, 919.733.2578)*

### ***Instant Runoff***

On August 17 a statewide second primary was held for Superintendent of Public Instruction. It was the only statewide race on the ballot, and the drop-off in turnout from first to second primary was 79.2%. As is often the case, the front-runner in the first primary lost. An active national group called the Center for Voting and Democracy is promoting a method whereby a runoff is made unnecessary by giving every voter a first and second choice in the first primary and counting of second-choices of voters whose first choices did not finish in the top two. In looking at the proposal, the legislature may consider several questions: Is it desirable? Is it do-able statewide, where avoiding a runoff would save the most money? If not now, when? *Bill Gilkeson (Research Division, 919.733.2578)*

### ***Ballot Access for Unaffiliated Candidates: Curative Legislation***

The US Middle District Court said in *Delaney v. Bartlett*, No. Civ.1:02 CV 00741 *United States District Court, M.D.N.C. (2004)*, that North Carolina's signature threshold for unaffiliated statewide candidates is invalid because of the disparity with the threshold for new parties: 2% of all registered voters for unaffiliated candidates versus 2% of the last Governor's race turnout for new parties. Two approaches have been suggested, both of which would drop the unaffiliated threshold for statewide candidates to that for new parties: 2% of the last Governor's race. One approach would leave the non-statewide unaffiliated threshold as it is, the other would drop the nonstatewide thresholds proportionally. *Bill Gilkeson (Research Division, 919.733.2578)*



messages. The North Carolina version of the Do-Not-Call legislation seems to prohibit anonymous robo calls, but enforcement is not through the boards of elections and is somewhat unclear. There is sentiment on the State Board of Elections to include robo calls among the media through which candidate ads must be labeled. Unsolicited electronic messages (e-mails) are also exempted from labeling requirements. Websites are exempted from all campaign finance regulation on the theory that the reader seeks them out rather than passively receiving them. *Bill Gilkeson (Research Division, 919.733.2578)*

### ***Exemption of State Board of Elections from APA***

For years the State Board of Elections has placed at the top of its legislative agenda the exemption of all its functions from the Administrative Procedure Act (APA). The APA regulates the actions of State agencies in making rules and deciding contested cases. The State Board of Elections, led by its Chair, has argued that the immediacy of the agency's duties makes the application of the APA's review process impractical. Several past attempts to exempt the agency have resulted in only limited change. *Bill Gilkeson (Research Division, 919.733.2578)*

## **Environment and Natural Resources**

*George Givens, Jeff Hudson, Jennifer McGinnis, Tim Dodge (Research Division 919.733.2578)*

### ***Air Quality***

The General Assembly has taken significant steps to reduce air pollution from stationary and mobile sources over the past decade. Two major efforts include the passage of S.L. 2002-4, commonly referred to as the "Clean Smokestacks Act", which directs the fourteen largest coal-fired power plants in the State to reduce their emissions of sulfur dioxide (SO<sub>2</sub>) and oxides of nitrogen (NO<sub>x</sub>) by over 70 percent by the year 2013, and the expansion of the Motor Vehicle Inspections and Maintenance (I/M) Program from 9 to 48 counties. Even with these past efforts, however, all or part of thirty-two counties in North Carolina were designated as "nonattainment" counties by the US Environmental Protection Agency for ground level ozone in 2004 and three additional counties were designated as nonattainment for fine particulate matter.

The Environmental Review Commission is currently evaluating various methods to provide incentives for the reduction of air pollution from mobile sources, including measures to reduce vehicle miles traveled and to promote the operation of fuel-efficient vehicles. The Environmental Management Commission recently adopted rules establishing more stringent emission control requirements for heavy-duty and medium-duty diesel engines and modified the emissions

### ***Liability for Environmental Cleanups***

Bills were introduced during the 2004 Regular Session that would limit liability for cleanup of environmental contamination of land in certain circumstances. In general, liability protection would be afforded to owners of contaminated property who did not cause or contribute to the contamination and who did not know or have reason to know of the contamination. "Innocent" landowner liability protection would also apply to owners of contiguous contaminated property. Future purchasers of contaminated properties would also receive liability protection even if they were aware of the contamination prior to purchase in certain circumstances. In all cases, liability protection would depend on the availability of a solvent responsible party or some other mechanism to assure that the property will be cleaned up. The details involved in achieving these objectives, which amount to an extension of principles embodied in previously enacted legislation governing redevelopment of "brownfields" property, are complex and were not resolved to the point that the bills were thought to be ready for action in 2004. Interest in these issues remains high, however, and work on resolution of the remaining issues is ongoing with the goal of having legislation ready for introduction in the 2005 Regular Session.

### ***Saltwater Fishing License***

During the 2004 Regular Session, the General Assembly enacted legislation establishing a Saltwater Fishing License. The license requirements of this legislation do not become effective until January 1, 2006. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission have been studying issues related to implementation of the Saltwater Fishing License legislation. These issues include license types and fees, exemptions from license requirements, administration of the licensing system, and use of license revenues. A specific issue that the two Commissions are considering is whether to grandfather in and exempt from the Saltwater Fishing License requirements those individuals who have purchased a lifetime license issued by the Wildlife Resources Commission. It is likely that members of the 2005 General Assembly will consider legislative proposals that attempt to address some or all of these issues.

### ***Solid Waste***

During the 2002 and 2003 Regular Sessions of the General Assembly, bills were introduced to create a statewide electronics recycling program. Electronics recycling has emerged as a growing issue recently, in part out of concern for the hazardous effects of improper disposal of cathode ray tubes (CRTs) (e.g. television picture tubes) found in computer monitors and television sets. The bills proposed

been enacted. The Sedimentation Control Commission has made several recommendations for amendments to the State's sedimentation control programs. The Environmental Review Commission will likely consider these recommendations and may recommend legislative proposals based on them for consideration by the 2005 General Assembly.

#### *Underground Storage Tank Cleanup Program*

The Leaking Petroleum Underground Storage Tank (UST) Cleanup Program is funded through revenue from tank fees and a fraction of a cent of the motor fuels tax. A special provision in the 2004 appropriations bill allocated additional funds from the motor fuels tax to the Commercial Leaking Petroleum UST Cleanup Fund and the Noncommercial Leaking Petroleum UST Cleanup Fund (UST Funds) and made other changes to the Leaking Petroleum UST Cleanup Program. The provision directed that the sum of \$19 million be credited to the UST Funds and to the Water and Air Quality Account in September 2004 and an additional fractional amount is to be credited throughout the 2004-2005 fiscal year.

The special provision also directed the Environmental Review Commission and the Joint Legislative Transportation Oversight Committee to jointly study the role of the State and the Department of Environment and Natural Resources in implementing the UST cleanup program. The issues to be studied include:

- The role of the State in assisting owners and operators of USTs in meeting applicable financial responsibility requirements and the availability and adequacy of private insurance.
- The adequacy of current and projected future revenue into the UST Funds.
- The feasibility and desirability of privatizing some or all of the functions of the UST Funds.
- The State's role in the cleanup of orphan UST sites.
- Whether existing UST rules are adequate to prevent future releases from USTs.

These topics may result in the introduction of legislation for consideration by the 2005 General Assembly.

## **Ethics and Lobbying**

*Kory Goldsmith, Robin Johnson, Walker Reagan (Research Division 919.733.2578)*

### **Ethics**

In light of the recent criminal actions brought against a former member of the Council of State and a former State Senator for ethics violations, and issues

necessary to amend our constitution so that the courts cannot find those statutes to be unconstitutional, as they did in Massachusetts. Accordingly, this issue is likely to surface again in the upcoming session. *Wendy Graf Ray (Research Division 919.733.2578)*

### ***Grandparents' Rights***

North Carolina law recognizes a grandparent's right to bring an action for visitation or custody of his or her grandchildren only in certain circumstances. A grandparent may: 1) intervene in an ongoing custody dispute and request visitation with the minor child; 2) petition for visitation, where custody has previously been determined, upon a showing of changed circumstances; or 3) petition for visitation where the minor child has been adopted by a step-parent or relative of the child and a substantial relationship exists between the grandparent and the child. In addition, a grandparent may bring an initial action for custody when the grandparent is alleging that the child's parent is unfit. Once a case is before the court, the judge must look to the best interests of the child in making a determination, but it is also important to note that the US Supreme Court has long held that parents have a fundamental constitutional right to make decisions concerning the care, custody and control of their children. Some other states have expanded grandparents' rights with regard to visitation and custody, but efforts to do so in North Carolina have not been successful. Judging from the frequency with which legislation has been introduced in past years, and the interest expressed by many North Carolina citizens who are grandparents, this issue may be addressed in some way in the upcoming session. *Wendy Graf Ray (Research Division 919.733.2578)*

### ***Alienation of Affection/Criminal Conversation***

North Carolina currently recognizes the common law marital torts of alienation of affection and criminal conversation. An action for alienation of affection is brought against a person outside of the marriage who interferes with the right of one spouse to the other's affection, love, society, comfort, and companionship. An action for criminal conversation is brought against a person outside of the marriage who interferes with the right to an exclusive sexual relationship between spouses. Despite a strong national trend to abolish these common law marital torts, attempts to abolish the torts in North Carolina have not been successful in past sessions. However, legislation is likely to be introduced again in the upcoming session. *Wendy Graf Ray (Research Division 919.733.2578)*

conform to the phase-out as of July 1, 2005, and the North Carolina estate tax will, for practical purposes, cease to exist. By that time, the yield from the tax will be over \$150 million.

There are several options for the General Assembly to consider in addressing this issue, including further extension of partial conformity, decoupling entirely from the 2001 federal changes, taking no action (which results in full conformity with federal law), adopting a stand-alone tax, or repealing the estate tax altogether. These options have been presented to the Revenue Laws Study Committee, but the Committee has made no formal recommendation.

### ***Sales Tax***

There are several sales and use tax issues facing the General Assembly this session ranging from whether it should allow the expiration of the additional ½% sales tax, which was enacted as a "temporary" measure to meet recent budget shortfalls, to consideration of more sweeping changes to the sales and use tax system, such as broadening the base, lowering the rates, and eliminating multiple rates.

#### ***Expiration of ½% State Rate, July 1, 2005***

In 2001, the General Assembly increased the State sales tax by one-half percent, from 4% to 4.5%, making the increase effective October 16, 2001 and setting its date of expiration as July 1, 2003. However, in 2003 the General Assembly delayed the sunset from July 1, 2003 to July 1, 2005. The ½% sales tax generates approximately \$400 million per year in revenue. The General Assembly will need to consider whether it wants to let the tax expire, to extend the tax, or to allow counties the option of levying an additional ½%.

#### ***Streamlined Sales Tax Project***

The Streamlined Sales Tax Project is an effort created by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax administration for both Main Street and remote sellers for all types of commerce. Forty-two of the 45 states with a sales and use tax, as well as the District of Columbia, are involved in the Project. The proposal makes it easier for out-of-state retailers (namely mail-order companies and internet companies) to collect a state's sales and use tax.

North Carolina has been a key state in the Streamlined Sales Tax Project. To continue its leadership in this project by conforming to the Streamlined Sales and Use Tax Agreement, the State will need to eliminate multiple sales tax rates and

### *Expiration of upper income tax bracket*

In 2001, the General Assembly added a new individual income tax bracket that imposed an additional ½% tax on certain North Carolina taxable income for three years, setting the date of expiration as January 1, 2004. The new bracket established an 8.25% tax rate on taxable income over \$200,000 for married couples filing jointly, over \$160,000 for heads of household, over \$120,000 for unmarried individuals, and over \$100,000 for married individuals filing separately. Prior to this change, the highest individual income tax rate was 7.75% on income over \$100,000 for married couples filing jointly, over \$80,000 for heads of household, over \$60,000 for single filers, and over \$50,000 for married couples filing separately.

In 2003, the General Assembly delayed the sunset of the upper-income individual income tax bracket from January 1, 2004 to January 1, 2006. With an annual value of \$104 million, the General Assembly will need to decide whether it wants to maintain the upper bracket or allow it to expire.

### *Corporate tax rate*

A 6.9% corporation income tax is levied on corporate net income derived from all business conducted in this State. The reduction of the corporate income tax rate and the modernization of or elimination of the franchise tax continues to be a much-requested change. In recent years, several bills have been introduced to either reduce the corporate tax rate or to introduce a graduated rate scale, but none of these measures have passed. The rate was last reduced in 1996.

In its 2002 report, the Governor's Commission to Modernize State Finances found that the corporate income tax is one of the most volatile of all revenue sources with substantial decreases in collections in recent years due to declining corporate profits, the increased use of tax planning schemes by multistate corporations, and the use of tax credits. The General Assembly may need to consider changes to its corporate tax structure in order to maintain economic growth and to remain competitive with other states.

### *Alcohol and Cigarette Taxes*

In looking for additional sources of revenue, states have increasingly turned to "sin taxes," which are increased taxes on items like cigarettes and alcohol. While several bills have been introduced over the last few years, the General Assembly has thus far resisted making any substantial increases to these items.

## **Health and Human Services**

*Dianna Jessup and Ben Popkin (Research Division 919.733.2578);*

*Carol Shaw and Lisa Hollowell (Fiscal Research Division 919.733.4910)*

### ***Federal Limits on Medicaid***

The Bush administration and the US Congress are considering a "wide range" of initiatives to curb Medicaid spending by eliminating improper payments and restricting eligibility and benefits. Federal officials are already sending auditors to states to investigate techniques used to shift costs to the federal government. In addition, a proposed rule requires states annually to prepare estimates of total improper payments and error rates for Medicaid and identify the causes of errors and recover excess payments to health care providers. The Bush administration and some members of Congress also favor implementing caps on federal Medicaid spending including block granting Medicaid funding. Any changes to the federal-state partnership for Medicaid will result in increased State costs for the NC Medicaid Program or require the NC General Assembly to make major changes to the program in order to reduce the state share of the program. Medicaid expenditures for fiscal year 2004-05 are projected to be \$2.4 billion and these expenditures are projected to grow over 9% per year over the next biennium assuming no changes on the federal level.

### ***NC Health Choice***

NC Health Choice is North Carolina's State Children's Health Insurance Program for Children, funded with a combination of State and federal funds. The program is based on the State Employees Health Plan and it is operated independently from Medicaid. Currently, NC Health Choice is serving over 122,000 children and program enrollment is growing about 1% per month. Unless some children are transferred to Medicaid, program enrollment is frozen, or other program modifications are made, the program will run out of federal dollars before the end of the 2006-07 fiscal year. In addition, the NC Health Choice program will need increased state appropriations to maintain enrollment at current or increased levels.

### ***Child Care Subsidy***

The North Carolina childcare subsidy program provides financial assistance for childcare for parents to work and/or improve their education. The program serves families primarily at or below 75% of State Median Income level. The program has grown to almost \$400 million annually, serving more than 160,000 children. The sources of funds in the program include straight state appropriations and state funds through Smart Start, Child Care Development

pilot program is to help North Carolina workers who have lost jobs as a result of changing economic conditions in the state and are in need of temporary assistance to avoid home foreclosures. The General Assembly appropriated a non-recurring amount of \$1,725,000 to fund the pilot program, of which the North Carolina Housing Finance Agency (NCHFA) may use up to \$25,000 to study North Carolina's foreclosure filing phenomena. Also, the NCHFA, a self-supporting public agency created in 1973 by the General Assembly, is responsible for the development and administration of the pilot program.

NCHFA will report its study findings on foreclosure filings and recommendations to the General Assembly no later than May 1, 2005. *Kathie Austin (Fiscal Research Division 919.733.4910)*

## **Information Technology**

*Brenda Carter and Dickie Brown (Research Division 919.733.2578)*

*Peter Capriglione (Information Systems Division 919.733.6834)*

### ***State Regulation of Spamming***

Legislators can expect to hear from constituents regarding the continuing problem of "Spamming". SPAM is unsolicited e-mail on the Internet. From the sender's point-of-view, it is a form of bulk mail, typically sent to a list obtained from a spambot (a program designed to collect or harvest e-mail addresses from the Internet) or to a list developed by companies that specialize in creating e-mail distribution lists. To the receiver, it usually seems like junk e-mail. It is roughly equivalent to unsolicited telephone marketing calls and direct mail marketing. Spammers typically send these e-mails to a distribution list in the millions, expecting that only a tiny number of readers will respond to their offer. Thirty-six states, including North Carolina, have laws regulating unsolicited commercial or bulk electronic mail advertising. Many of these state laws prohibit misrepresenting or falsifying the origin of or the routing information on messages; using an Internet address of a third party without permission, or including misleading information in the subject line of a message. Some states also prohibit the sale or distribution of software that is designed solely to falsify or forge the point of origin of or the routing information on e-mail messages. Most other aspects of state laws, such as labeling requirements for adult-oriented advertising, are preempted by the federal CAN-SPAM Act of 2003 (15 USC §§7701-7713). The act preempts any state law that "expressly regulates the use of electronic mail to send commercial messages, except to the extent that any such statute, regulation, or rule prohibits falsity or deception in any portion of a commercial electronic mail message or information attached thereto." The act prohibits fraudulent and deceptive



## **Insurance, Malpractice and Tort Reform**

*Kory Goldsmith, Tim Hovis, Walker Reagan (Research Division 919.733.2578)*

### ***Closed Blocks of Business***

A "block of business" refers to insurance contracts issued by an insurer under a particular policy form. When the insurer ceases to market or sell this particular policy form in the State and no longer adds new contracts to that block, the block becomes a closed block of business. This practice is typically used with accident and health, disability, and long term care policies. As the block becomes older, more claims are made because of illness and the block becomes smaller because of the death of many insureds. This can result in significant increases in premiums, sometimes by exponential amounts.

California and Wyoming have enacted legislation regulating the use of closed blocks, and other states are considering regulation. Regulatory options include requiring insurers to notify and receive approval from the Commissioner before closing a block. The State could also regulate underwriting practices for closed blocks by requiring insurers to spread the claims experience of the closed block to open blocks that are currently marketed and sold by the insurer in the State. *Tim Hovis (Research Division 919.733.2578)*

### ***Health Insurance***

The availability and affordability of health insurance is an issue that has been and is likely to continue to be a topic that receives attention at the State and national level. Scope of coverage is also likely to receive attention.

During the 2003 Session, some business groups attempted to address the availability of health insurance for small businesses by amending the North Carolina Small Employer Group Health Coverage Reform Act (Part 5 of Article 50, Chapter 58 of the NC General Statutes) to allow trade associations to establish group health plans for their members (Senate Bill 758). This option is allowed under federal law, but pre-empted by the NC Small Employer Act. The proponents of the bill argued that because the NC Small Employer Act is more restrictive than federal law, group insurance carriers are leaving the market, thereby reducing the availability of health insurance for small businesses. The opponents of the bill expressed concern that other aspects of the legislation could have the effect of removing the more easily insured small businesses from the insurance pool, thereby leaving the most risky insureds in a smaller pool. Given the large number of small employers in the State, and the market pressure to provide health insurance coverage to their employees, the General Assembly should anticipate receiving proposals addressed at this issue.

Reform that met during session in the spring and summer of 2003. The Senate returned in September 2003 for a two-day session to pass a medical malpractice bill recommended by the Senate committee. In the fall of 2003, the House appointed the House Blue Ribbon Task Force on Medical Malpractice that met in the interim from October 2003 until March 2004. The 2004 Session enacted several provisions related to medical malpractice reform in the areas of patient safety, nursing home medical director liability, and protection from admission into evidence of doctor apologies and offers of remediation when medical injuries occur.

In the 2005 session, the General Assembly is expected to consider if and to what extent a medical malpractice crisis currently exists in NC, the causes for any crisis that exists, solutions that can be constitutionally enacted to address those causes, and how the cost of medical injuries should be paid.

The following specific topics were considered last session and are likely to be included in medical malpractice considerations this session:

#### *Caps On Non-Economic Damages*

Proposals to cap or limit the maximum amount an injured patient can recover from a medical provider for non-economic damages (i.e. pain and suffering) suffered as a result of medical negligence will likely be offered again this session. Suggested caps on these damages range from \$250,000 up to \$1 million. Medical malpractice insurers and medical providers argue that caps are needed to reduce medical malpractice premiums by reducing the total claims paid and by providing for greater certainty and predictability. Imposition of these types of caps would also reduce the range for negotiations in settlements of these types of cases, thereby reducing overall costs. Patients and trial lawyers argue that caps on non-economic damages would be unconstitutional in NC, are not the cause of increases in medical malpractice premiums, infrequently exceed \$250,000 currently, and would be an unfair shifting of the financial burden caused by the health provider's negligence.

#### *Caps On Plaintiff's Attorneys' Fees*

Proposals to limit the amount of attorneys' fees lawyers representing injured patients can receive will also likely be reintroduced this session. Medical malpractice insurers and medical providers argue that patients' contingent attorneys fees make up at least one-third of the total medical malpractice claim, driving up the cost of settlement, and depriving injured patients of their full compensation. Trial lawyers and patients argue that without the current contingency fee arrangements, many patients would be unable to pursue their rights through the courts to recover damages due to medical negligence. Patients

rise to the claim. If an injury was not readily discoverable, then the action must be brought within one year of discovery, but in no event more than 4 years after the last act giving rise to the claim. Where injury is caused by a foreign object left in the body, a claim must be filed within 1 year after discovery of the object, but in no event may the claim be filed more than 10 years after the last act of the defendant giving rise to the claim. The statute of limitations for minors injured by professional malpractice provides that a minor has one year from their 18<sup>th</sup> birthday to file a malpractice claim.

It is expected that proposals will be offered this year to reduce the statute of limitations for medical injuries to minors to a shorter period, either the same period as for adults or a more specific time, such as 8 to 10 years after the last negligent act.

#### *Permit Periodic Payment Of Damages For Longer-Term Medical Needs And Expenses*

Proposals will likely be offered again this session to allow courts to provide for the payment in medical malpractice actions of long-term expenses, i.e. future medical bills or lost income, over time instead of in a lump sum payment at the time of judgment. Insurers and medical providers argue this would reduce their costs without hurting the injured patient, would help the injured patient manage their recovery and would only require payments for actual expenses incurred based on the actual lifetime of the patient. Patients and trial lawyers argue that jury awards are currently reduced to present-day value and patients should have control and authority to manage their own assets and plan for their future.

#### *Improve Patient Safety*

Proposals will likely be offered to strengthen the law in the area of patient safety. During the medical malpractice debate, patients and trial attorneys have argued that the focus on solving the medical malpractice crisis should be on the prevention end. They argue that greater efforts should be required to prevent and correct medical negligence errors that would reduce the number and extent of injuries and therefore reduce the costs arising from medical negligence. Medical providers argue that patient safety is already the focus but protective laws should be in place to allow medical providers to monitor their practices and take remedial corrective steps in response to medical errors without fear that these actions will be used as evidence of negligence in a medical malpractice action.

#### *Strengthen Doctor Discipline*

Proposals will likely be offered this session to strengthen the laws for disciplining incompetent and chronically negligent medical providers. As part of the emphasis on medical malpractice prevention, patients and trial attorneys argue

The Senate passed legislation during the 2003 Session which would have shifted the burden of proof to require the insurer, not the Commissioner, to show that the rate was not excessive, inadequate or unfairly discriminatory. Similar legislation may also be considered during the 2005 Session. Legislation may also be considered which would require the Commissioner to hold a hearing on an insurer's request for a rate change under certain circumstances, such as upon the request of a consumer or health care provider or if the rate change exceeds a certain percentage. *Walker Reagan and Tim Hovis (Research Division 919.733.2578)*

### ***Tort Reform***

In addition to the specific reforms in the medical malpractice area, more general concerns have been expressed about the cost to society arising from frivolous lawsuits and extreme class-action lawsuits. Insurers and businesses argue that defense cost for defending frivolous lawsuits drives up their liability premiums that in turn drive up the costs they have to pass on to consumers. They also believe that liberal class-action laws encourage frivolous and unjustified actions that are very expensive to defend. Trial lawyers argue that the current sanctions against truly frivolous lawsuits are adequate and that the current law for certification of actions as class-action lawsuits is adequate to protect against frivolous and unjustified actions from being filed. They also argue that class action lawsuits are a much more judicially efficient way to address a common problem affecting a large number of people. *Walker Reagan (Research Division 919.733.2578)*

### ***Workers Compensation/Independent Truckers***

In the 2003 Regular Session, the General Assembly enacted G.S. 97-19.1, which requires a common law test to determine if a truck driver is an independent contractor or an employee. Prior to the enactment of this statute and based on a ruling of the North Carolina Supreme Court, a truck driver operating a truck under another trucking company's Interstate Commerce Commission (ICC) license was considered an employee of the trucking company. As an employee, the trucking company, not the trucker, was required to provide workers compensation insurance. Under G.S. 97-19.1, if the driver is considered to be an independent contractor, the trucking company may require the driver to reimburse the company for the insurance or require the driver to obtain the insurance.

The Workers Compensation Act generally exempts employers with fewer than three employees from the requirements of the Act. However, for independent truckers, G.S. 97-19.1 specifically requires independent truckers to have workers compensation insurance regardless of the number of employees. Legislation amending G.S. 97-19.1 may be considered which would provide that independent

public purposes, after providing about \$500 million in prizes to players and more than \$70 million in payments to vendors and retailers.

Modern state lotteries have been operated in the United States since 1964 when the first 20<sup>th</sup> century lottery was introduced in New Hampshire. Currently, lotteries are operated in 40 states and the District of Columbia. There are numerous multi-state lotteries offered to the public, including Powerball. In fiscal year 2003, the last year for which audited lottery sales figures are available, lottery sales exceeded \$41 billion. North Carolina is the most populace state in the United States without a lottery and the last state on the east coast without a lottery.

With the increasing demands for funds needed for existing and proposed programs, shortfalls from previous years that need to be made up, and possible lawsuit awards against the State, the Lottery is likely to come up again during the 2005 Session. *Ken Levenbook (Bill Drafting Division 919.733.6660)*

### ***Video Poker***

The sheriffs will probably continue to push the General Assembly to ban video poker in NC, except on the Cherokee Indian Reservation. *Ken Levenbook (Bill Drafting Division 919.733.6660)*

## **Mental Health**

*Kory Goldsmith, Ben Popkin, Shawn Parker (Research Division 919.733.2578)*

### ***Reform Implementation***

In 2001, the General Assembly passed significant and sweeping reforms for the public mental health system in North Carolina. The impetus for reform came in part from the US Supreme Court Olmstead decision that held that States had an obligation to provide community-based treatment for persons with mental disabilities when treatment officials determined community placement is appropriate, the affected person does not oppose community-based treatment, and the placement can be reasonably accommodated taking into account available resources. [*Olmstead v. L.C.*, 527 U.S. 581 (1999)] Reform was also driven by the findings and recommendations of multiple studies that found that the governance and financing structures for public mental health did not promote quality or accountability.

The reform legislation called for increased accountability, emphasized consumer-driven community-based services, and shifted the role of public agencies from direct service providers to managing and coordinating services. Other legislation directed the Department of Health and Human Services to develop policies to provide appropriate services in community settings for persons

proliferation of group homes in certain areas of the State, lack of monitoring and oversight at the State and local level, and lack of training for the workers in the homes. The Secretary of Health and Human Services is expected to make recommendations to the Governor and the General Assembly on how to address these issues, including additional resources for monitoring by licensing agencies as well as training requirements for group home employees. *Kory Goldsmith (Research Division 919.733.2578)*

## **Real Property**

*Kory Goldsmith, Walker Reagan, Steven Rose (Research Division 919.733.2578)*

### ***Uniform Electronic Recording Act***

The General Statutes Commission is expected to recommend that NC adopt the Uniform Electronic Recording Act. In 2004 the General Assembly asked the General Statutes Commission to look at changes needed in the law to permit electronic recording of certain documents in the Register of Deeds offices. This study was requested after several local register of deeds offices asked for local legislation to permit electronic recording, similar to local authority granted to Mecklenburg and Cabarrus Counties in 2002. Concerns were raised regarding statewide uniformity and consistency with other states' laws permitting electronic recording. The Uniform Act provides for the establishing of uniform legal standards for the receipt, recordation, authentication, preservation, and retrieval of electronic documents. This legislation is of particular interest to the NC Register of Deeds Association, the NC Land Title Association, the Real Property Section of the NC Bar Association, the Property Records Industry Association and the Mortgage Industry Standards Maintenance Organization. *Walker Reagan (Research Division 919.733.2578)*

### ***Homeowner Association Regulation***

In 1998, the General Assembly adopted the Planned Community Act (Chapter 47F of the General Statutes) as a way to provide for more continuity in the operations and authority of residential homeowner associations. Since that time legislators have been receiving more and more complaints from homeowners and homeowners associations over the operations and powers of homeowner associations. Homeowners have complained that governing officials of the associations are abusing their authority and the cost to the homeowner to defend their rights in court is cost prohibited. Some homeowners are complaining about high fines being imposed and their property being subjected to foreclose for nonpayment. Others are complaining that in disputes over past due owner's dues,

the North Carolina Teachers' and State Employee's Comprehensive Major Medical Plan (State Health Plan). This plan is underwritten by the State and administered by Blue Cross Blue Shield. The State currently pays the full cost of the premium for employees who work at least 30 hours per week. Employees pay the cost of dependent coverage.

### ***Retirement***

*Stanley Moore (Fiscal Research Division 919.733.4910); Karen Cochrane-Brown and Theresa Matula (Research Division 919.733-2578); Sean Dail (Bill Drafting Division 919.733.6660)*

### ***Employer Contribution and Accrual Rates***

The North Carolina Retired Governmental Employees' Association (NCRGEA) acknowledges a surplus for the Teachers and State Employees Retirement System (TSERS), but is concerned that economic conditions could cause this surplus to vanish in the near term if the employer contribution rate is not increased to assure that TSERS earnings keep pace with the cost of living. The NCRGEA believes that, despite recent increases, the employer contribution rate is still low and hopes the General Assembly will address this concern in the upcoming biennium. The State Employees' Association of North Carolina's Policy Platform Objectives for 2005 includes seeking "restoration of the employer's contribution to the Retirement System at 9.35 percent, and seeking an increase in the retirement accrual rate to 2.5, which would translate into approximately 75 percent of average final compensation, for all employees in the Teachers' and State Employees' Retirement System."

### ***Post Retirement Reemployment***

Currently, retired teachers are the only group that is exempt from the TSERS earnings cap. S.L. 1998-212, Section 67, which became effective on January 1, 1999 and was set to expire on June 30, 2003, allowed retired teachers to return to work after 12 months and not be subject to the statutory earnings cap. This provision has been extended since that time and was extended in 2004 to June 30, 2005. The time between retirement and return to work has also been shortened to six months and some have sought to shorten it further. Retired employees, other than teachers, that are reemployed may not earn more than \$24,620 or 50% of their last 12 months of compensation, whichever is greater, during the 12 months following retirement, or any calendar year, or their retirement benefit will be stopped. There have been concerns expressed on both sides of this issue regarding the significance of this provision as a recruitment tool, the impact of this provision on the IRS tax qualification of the TSERS, the fairness to other employee groups, and the financial impact on the system. As a result, the 2004 Appropriations Act

### ***State Employee's Comprehensive Major Medical Plan (State Health Plan)***

Mark Trogdon (Fiscal Research Division 919.733.4910); Karen Cochrane-Brown and Theresa Matula (Research Division 919.733.2578); Phyllis Pickett (Bill Drafting Division 919.733.6660)

#### ***Funding***

It has been estimated by the Executive Administrator of the State Health Plan that the Plan will need at least \$375 million in additional funding from the General Fund for the 2005-2007 biennium to maintain State-paid premiums for employees, retirees, and their dependents at current benefit levels. This projected increase is equivalent to a 19.8% premium increase according to the Plan's consulting actuary. Premiums paid by employees and retirees to provide health benefit coverage under the Plan for their dependents would also rise by an equivalent percentage under this scenario.

The Executive Administrator of the State Health Plan reports that he favors a \$220 million appropriation, equivalent to a lesser 12% premium increase, in order lower the rate of premium increase for employee/retiree paid dependent premiums and to lessen funding needed from the General Assembly to fund State paid premiums for employees and retirees. However, this scenario would also require either additional benefit reductions for employees, retirees, and their dependents and/or reductions in charges from medical providers serving plan members in order to keep the Plan solvent.

The North Carolina Retired Governmental Employees' Association is concerned about the long-term stability of the State Health Plan. The Top Ten Policy Platform Objectives for the State Employees Association of North Carolina (SEANC) include seeking a continuation of a fully paid individual health care benefit for all active and retired state employees, and seeking legislation to limit State Health Plan prescription drug co-payment for maintenance medications to one co-pay per quarter.

#### ***GASB Statement 45***

Governmental Accounting Standards Board (GASB) Statement No. 45, *Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions*, addresses how state and local governments account for and report their costs and obligations related to postemployment healthcare and other nonpension benefits, which are referred to as *other postemployment benefits*, or *OPEB*. The statement generally requires that state and local governmental employers account for and report the annual cost of OPEB and the outstanding obligations and commitments in the same manner as they currently do for pensions. It is not anticipated that the GASB requirements will be a funding issue in the long session, since these disclosure requirements will not affect the State



budget to enable the pay plan to catch up the ground lost to inflation over the past eight years.

### ***Other Issues***

There are a few other issues that may arise during this biennium. It is anticipated that the Office of State Personnel may again pursue a rewrite of the State Personnel Act (Chapter 126 of the General Statutes). The State Employees Association of North Carolina (SEANC) plans to oppose legislation that would remove state employees from the protections of the State Personnel Act through the Office of State Personnel, and supports having each agency continue to report to the Office of State Personnel. SEANC opposes privatization and downsizing of state government services. SEANC plans to endorse the repeal of G.S. §95-98, which prohibits contracts between units of government and labor unions, trade unions or labor organizations concerning public employees. Along these lines, SEANC plans to support the enactment of legislation to govern collective bargaining by North Carolina public employees and plans to seek an amendment G.S. §143-3.3(g) and G.S. 135-18.8 to delete language that voids dues deduction from payroll or from a retirement benefit if an employees' or retirees' association engages in collective bargaining.

In 2003, the General Assembly provided a 1.28% increase to those beneficiaries whose retirement began on or before July 1, 2002; and beneficiaries who retired after July 1, 2002, but before June 30, 2003, received an increase in their retirement allowances on July 1, 2003 equal to a prorated amount of the 1.28% increase. Beneficiaries of the Teachers and State Employees Retirement System who retired on or before July 1, 2003 received a 1.7% adjustment effective July 1, 2004. The General Assembly made no reduction in State Health Plans benefits for the 2003-2005 biennium. However, it is anticipated that changes to premiums and benefits, and/or increases in Plan funding may be considered in the near future as the State struggles to manage the rising cost of health care.

### **Taxation -- see Finance**

### **Transportation**

*Brenda Carter, Giles Perry, Wendy Graf Ray, Dickie Brown (Research Division 919.733.2578)*

#### ***NC DOT Investment Strategy***

In September 2004, the Department of Transportation (DOT) completed a Long-Range Statewide Multimodal Transportation Plan. This plan, the result of three years of study by the Department, sets out a broad 25-year investment

### ***Prohibit Handheld Cell Phones While Driving – See Utilities***

### ***DOT Minority and Disadvantaged Business Program***

DOT may propose an update of their existing disadvantaged and minority owned and women owned business program to comply with a recently completed "next generation" disparity study, required by federal court decisions. *Giles Perry (Research Division 919.733.2578)*

### ***DOT Retired Engineers***

DOT may ask to remove the State cap on earnings by retired engineers in order to address a DOT reported shortage of qualified personnel in this field. *Giles Perry (Research Division 919.733.2578)*

### ***GARVEE Bonds***

DOT may advocate for authority to issue GARVEE bonds (Grant Anticipation Revenue Vehicles) to accelerate various State highway construction projects. GARVEE bonds are federally authorized debt instruments financed by anticipated future federal-aid highway funds. *Giles Perry (Research Division 919.733.2578)*

### ***8-Year Drivers License/Internet DL Renewal***

The Division of Motor Vehicles may propose changing the driver's license renewal cycle from 5 years to 8 years for some drivers. DMV may ask for authority to renew some drivers' licenses by the Internet. *Giles Perry (Research Division 919.733.2578)*

### ***Drivers License Security***

The recently enacted federal Intelligence Reform and Prevention Act of 2004 (P.L. 108-458, Section 7212) requires the federal Secretary of Transportation, in consultation with the federal Secretary of Homeland Security, to establish nationwide minimum standards for driver's licenses. The national standards are required to include standards for the documentation required to show proof of identity, for verification of documents used to obtain a driver's licenses, for processing of applications to prevent fraud, standards for the information to be included on each driver's license, for common machine readable identity information, and for making driver's license more tamper resistant. Once these national standards are issued, current State laws and rules will need to be amended to comply with this federal mandate. Prior to adoption of the new federal driver's license rules, discussion of this State's current drivers license issuance standards will continue, and will likely include discussion of the issue of

parties could not reach a consensus and no recommendations were made. Items at issue included placing a cap on the surcharge and the actual uses of the funds. Bills were introduced again in the 2003 session, but none passed.

The issue remains and has grown in importance to local governments as they seek to shift certain services from tax supported services to fee supported services, thus allowing the property tax rate to be kept down. It is, therefore, likely that bills will be introduced in 2005 to expand the allowable expenditures, while possibly placing a cap on the amount of surcharge permitted. *Steven Rose (Research Division 919.733-2578)*

### ***Prohibit Handheld Cell Phones While Driving***

In March 2003 the Highway Research Center located at the University of North Carolina in Chapel Hill released a study showing that a very high percentage of rear end collisions involved drivers using handheld cell phones at the time of the accident. The study suggested that about 1500 car crashes in NC each year involved drivers talking on a cell phone at the time of the accident. Driver inattention as a result of the cell phone use was suggested as the cause in most of these. House Bill 623 was introduced in the 2003 legislative session. It would have banned the use of a handheld cell phone while driving, thus requiring a headset or a speakerphone. The bill was turned into a study in the Studies Act of 2003, but that bill did not pass. It appeared again in the Studies Act of 2004, authorizing the Legislative Research Commission to study the issue. The study was not funded.

The issue remains active with a number of states keeping statistics on the involvement of cell phones in crashes. Also, a number of states have considered bills regulating cell phone usage while driving, although few have passed. Cell phone companies usually oppose such legislation, preferring warnings and educational programs. Because the issue of distracted drivers using cell phones remains in the public eye (often literally), and with many of the sponsors of the 2003 bill returning, it is likely that legislation will be considered in the 2005 session. *Steven Rose (Research Division 919.733-2578)*